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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 CARMAN BEMISDARFER,
12 Plaintiff,
13 v.
14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social
Security,
16 Defendant.

17 CASE NO. EDCV 17-1336 SS

18
19 **MEMORANDUM DECISION AND ORDER**

20
21 **I.**

22
23 **INTRODUCTION**

24
25 Carman Bemisdarfer ("Plaintiff") brings this action seeking
26 to overturn the decision of the Acting Commissioner of Social
27 Security (the "Commissioner" or "Agency") denying her application
28 for Supplemental Security Income. The parties consented, pursuant
to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned
United States Magistrate Judge. (Dkt. Nos. 11, 12, 14). For the
reasons stated below, the Court AFFIRMS the Commissioner's
decision.

II.

PROCEDURAL HISTORY

On June 21, 2013, Plaintiff filed an application for Supplemental Security Income ("SSI"), pursuant to Title XVI of the Social Security Act, alleging a disability onset date of October 2, 2012. (AR 134, 213-34). The Commissioner denied Plaintiff's application initially and on reconsideration. (AR 120-49). Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), which took place on September 4, 2015. (AR 40-91, 165-66). The ALJ issued an adverse decision on March 11, 2016, finding that Plaintiff was not disabled because there are jobs that exist in significant numbers in the national economy that she can perform. (AR 20-34). On May 9, 2017, the Appeals Council denied Plaintiff's request for review. (AR 1-6). This action followed on July 3, 2017.

III.

FACTUAL BACKGROUND

Plaintiff was born on December 21, 1976. (AR 213). She was thirty-eight (38) years old when she appeared before the ALJ on September 4, 2015. (AR 40). Plaintiff has a tenth-grade education and a medical assisting certificate. (AR 48, 125). She is single and lives by herself. (AR 46). Plaintiff last worked in October 2012 as a certified nursing assistant (CNA). (AR 260-62). She alleges disability due to hepatitis C, bipolar disorder, and cirrhosis. (AR 260).

1 **A. Plaintiff's Statements And Testimony**

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3 On August 8, 2013, Plaintiff submitted an Adult Function
4 Report. (AR 282-90). She is able to take care of personal grooming
5 and prepare simple meals without assistance. (AR 284). She is
6 unable to perform household chores except laundry twice weekly.
7 (AR 284). Plaintiff maintained that she cannot leave the house
8 alone but acknowledged shopping for groceries. (AR 285). She
9 engages in social activities with her boyfriend. (AR 286).

10

11 Plaintiff testified that she is unable to work due to chronic
12 joint pain, hepatitis C, cirrhosis of the liver, and a mood
13 disorder. (AR 47, 59-62). She acknowledged that her hepatitis C
14 has been in remission for a year. (AR 60-61). She has pain in
15 her hips and knees related to her degenerative joint disease. (AR
16 59, 66, 73). Plaintiff has abdominal pain from her cirrhosis. (AR
17 77-78). She reported being able to stand and walk for an hour
18 before needing to lie down and rest. (AR 69). She denied using
19 any assistive devices to ambulate. (AR 74). She has difficulty
20 performing daily activities due to her pain. (AR 66-68). Plaintiff
21 uses oral medications as well as patches to manage her pain. (AR
22 75-76). She alleged that her medications cause drowsiness. (AR
23 63).

24

25 Plaintiff acknowledged a history of drug abuse. (AR 65). She
26 relapsed with methamphetamine in June 2013. (AR 65). She asserted
27 that she checked into a rehabilitation center and has been sober
28 ever since. (AR 65-66).

1 Plaintiff testified that she has difficulty maintaining focus
2 and concentration. (AR 47, 50, 68-69). Her last psychiatric
3 hospitalization was in August 2015. (AR 80).

4

5 The ALJ found Plaintiff "less than fully credible." (AR 26).
6 The ALJ concluded that the objective medical evidence does not
7 fully corroborate Plaintiff's allegations of disabling pain. (AR
8 26, 27). Further, Plaintiff has not received the type of treatment
9 one would expect based on her subjective statements. (AR 26).
10 Finally, the ALJ noted that Plaintiff has provided conflicting
11 statements regarding her drug use. (AR 27). While she testified
12 at the September 2015 hearing that she has been sober since June
13 2013, in July 2015 she admitted drinking on a daily basis and using
14 methamphetamine.¹ (AR 27; see id. 1141).

15

16 **B. Treatment History**

17

18 In August 2011, Plaintiff complained of bilateral knee pain,
19 which sometimes radiates to her lower legs. (AR 380). An
20 orthopedic evaluation found only tenderness to palpitation in the
21 knees and positive McMurray's testing.² (AR 380). There was no
22 evidence of erythema, edema, clicking with internal rotation,
23 numbness, or tingling. (AR 380). An x-ray of the bilateral knees

24 ¹ Plaintiff does not challenge the ALJ's adverse credibility
25 finding. (See generally Dkt. No. 20 at 2-4)).

26 ² "The McMurray Test is . . . commonly used in orthopedic
27 examinations to test for damage/tears to . . . the meniscus."
<<http://physicaltherapyweb.com/mcmurray-test-orthopedic-examination-knee/>> (last visited May 1, 2018).

1 found "no significant joint effusion, indicating only "minimal
2 arthritic change." (AR 379). In December 2012, an x-ray of the
3 cervical spine found minimal disc space narrowing at C5-6 with
4 minimal osteophyte formation. (AR 1010). In April 2013, a liver
5 biopsy confirmed hepatic cirrhosis. (AR 370, 900). In August
6 2013, Plaintiff presented to the emergency room with symptoms of
7 upper abdominal pain, fatigue, and weakness. (AR 689). An
8 abdominal ultrasound revealed enlarged fatty liver, enlarged
9 spleen, and small ascites.³ (AR 687-88, 1013). A physical
10 examination was largely unremarkable, with normal range of motion.
11 (AR 691-92). Plaintiff was diagnosed with chronic liver disease,
12 cirrhosis, and hyperbilirubinemia. (AR 696). She was prescribed
13 several medications to manage her pain, including Norco. (AR 658).

14

15 On October 3, 2013, Sohail K. Afra, M.D., performed a complete
16 internal medicine consultative examination on behalf of the Agency.
17 (AR 657-62). No medical records were made available to Dr. Afra,
18 who instead obtained a medical history from Plaintiff. (AR 657).
19 Plaintiff's chief physical complaints were hepatitis C and
20 degenerative joint disease. (AR 658). A physical examination was
21 unremarkable. Plaintiff ambulated without difficulties and without
22 the need for an assistive device. (AR 661). Plaintiff had normal
23 range of motion in the cervical and lumbar spine. (AR 659-60).

24

25 ³ "Ascites is the abnormal buildup of fluid in the
26 abdomen. . . . Symptoms may include increased abdominal size,
27 increased weight, abdominal discomfort, and shortness of
breath. . . . In the developed world, the most common cause is
liver cirrhosis." <<https://en.wikipedia.org/wiki/Ascites>>
(footnotes omitted) (last visited May 1, 2018).

1 She had pain in her knees with normal range of motion bilaterally.
2 (AR 660). Plaintiff had full motor strength in her upper and lower
3 extremities bilaterally. (AR 661). A sensory examination and
4 Plaintiff's reflexes were within normal limits. (AR 661). Dr.
5 Afra diagnosed a history of hepatitis C, mechanical-type back pain,
6 and a history of arthritis. (AR 661).

7

8 In March 2014, Plaintiff complained of chronic pain in her
9 knees and hips. (AR 793). A physical examination was unremarkable.
10 (AR 794). She was diagnosed with generalized osteoarthritis, low
11 back pain, chronic hepatitis C, cirrhosis of the liver, anxiety,
12 and depressive disorder. (AR 794). In August 2014, Plaintiff was
13 treated at the emergency room, complaining of "severe" low back
14 pain, which radiates to her abdomen. (AR 1113). An abdominal CT
15 scan revealed dilated veins of the abdominal wall, findings
16 suggestive of cirrhosis and portal hypertension.⁴ (AR 892-93,
17 1015-16, 1130). In November 2014, Plaintiff complained of severe
18 pain in her right hip. (AR 817). A physical examination was
19 unremarkable. (AR 818). Plaintiff's treating physician assessed
20 generalized osteoarthritis, low back pain, chronic hepatitis C,
21 cirrhosis of the liver, anxiety, depression, bipolar disorder, and
22 chronic obstructive pulmonary disease. (AR 818-19). A right hip
23 x-ray was ordered and pain medications prescribed. (AR 819). In
24 January 2015, a CT of Plaintiff's lumbar spine indicated mild disc
25

26 ⁴ "Portal hypertension occurs when there is an obstruction of
27 blood flow through the liver and pressure rises within the portal
vein." <www.medicinenet.com/portal_hypertension/article.htm>
28 (last visited May 2, 2018).

1 degeneration and right L5 spondylolysis and right L5-S1 face
2 arthropathy. (AR 896). A CT of her right hip found mild
3 osteoarthritis. (AR 901).

4

5 On March 16, 2015, Jeffrey D. Seip, M.D., an orthopedic
6 specialist, evaluated Plaintiff for complaints of hip pain. (AR
7 903-05). Plaintiff reported "sharp pain that pops" and stated that
8 she has been falling lately. (AR 903). She takes Norco for her
9 pain, which she described as 9-10/10 currently and usually 7-8/10
10 with activity. (AR 903). Plaintiff also complained of fatigue,
11 hearing loss, ringing in the ears, earache, swollen glands,
12 swelling of feet and ankles, frequent urination, varicose veins,
13 dizziness, numbness, tremors, excessive thirst, and heat and cold
14 intolerance. (AR 904). On examination, Plaintiff ambulated
15 independently without an assistive device. (AR 904). She had
16 painful palpation over her right hip. (AR 904). While Plaintiff
17 had painful range of motion with rotation, she had full range of
18 motion of her knees and ankles. (AR 904). Dr. Seip found no
19 evidence of neurological defects. (AR 904). He diagnosed mild
20 osteoarthritis of the right hip and ordered a cortisone injection.
21 (AR 904-05; see id. 907, 1025).

22

23 In April 2015, an abdominal ultrasound indicated an enlarged
24 fatty liver with features of cirrhosis, but no evidence of ascites
25 or varices. (AR 1026-27). A second ultrasound later that month
26 revealed mild hepatic steatosis and small hepatic lesions
27 consistent with hemangiomatosis. (AR 773). A CT scan of the
28 abdomen found "minimal varices" near the cardia of the stomach.

1 (AR 771). The liver, spleen, pancreas, and gallbladder were
2 "unremarkable." (AR 771).

3

4 On May 22, 2014, Zeid Kayali, M.D., Plaintiff's treating
5 physician, completed a "Medical Opinion Re: Ability To Do Work-
6 Related Activities (Physical)." (AR 716-18). Dr. Kayali opined
7 that Plaintiff can lift and carry less than ten pounds both
8 occasionally and frequently. (AR 716). He further concluded that
9 Plaintiff can stand and walk for less than two hours in an eight-
10 hour workday and sit for six hours in an eight-hour workday. (AR
11 716). Dr. Kayali further limited Plaintiff to never climbing
12 stairs or ladders; avoiding all exposure to extreme cold, extreme
13 heat, respiratory irritants, and hazards; and no driving
14 automobiles or operating machinery. (AR 717-18). Finally, Dr.
15 Kayali opined that Plaintiff would likely miss three or more days
16 of work per month as a result of her impairments or treatment. (AR
17 718).

18

19 **C. State Agency Consultant**

20

21 On March 27, 2014, M. Mazuryk, M.D., a State agency
22 consultant, reviewed all the available evidence in the medical
23 file. (AR 120-33). Dr. Mazuryk opined that Plaintiff can
24 occasionally lift twenty pounds, frequently lift ten pounds; stand,
25 walk, or sit six hours in an eight-hour workday; occasionally climb
26 ramps/stairs and ladders/ropes/scaffolds; and occasionally
27 balance, stoop, kneel, crouch, and crawl. (AR 129-30). Dr. Mazuryk
28 also concluded that Plaintiff should avoid concentrated exposure

1 to extreme heat, vibration and hazards. (AR 130-31). On January
2 24, 2014, L.C. Chiang, M.D., another State agency consultant,
3 concurred with Dr. Mazuryk's assessment. (AR 144-45).

4

5 **IV.**

6 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7

8 To qualify for disability benefits, a claimant must
9 demonstrate a medically determinable physical or mental impairment
10 that prevents the claimant from engaging in substantial gainful
11 activity and that is expected to result in death or to last for a
12 continuous period of at least twelve months. Reddick v. Chater,
13 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).
14 The impairment must render the claimant incapable of performing
15 work previously performed or any other substantial gainful
16 employment that exists in the national economy. Tackett v. Apfel,
17 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
18 § 423(d)(2)(A)).

19

20 To decide if a claimant is entitled to benefits, an ALJ
21 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
22 steps are:

23

24 (1) Is the claimant presently engaged in substantial gainful
25 activity? If so, the claimant is found not disabled. If
26 not, proceed to step two.

27

28

- 1 (2) Is the claimant's impairment severe? If not, the
2 claimant is found not disabled. If so, proceed to step
3 three.
- 4 (3) Does the claimant's impairment meet or equal one of the
5 specific impairments described in 20 C.F.R. Part 404,
6 Subpart P, Appendix 1? If so, the claimant is found
7 disabled. If not, proceed to step four.
- 8 (4) Is the claimant capable of performing his past work? If
9 so, the claimant is found not disabled. If not, proceed
10 to step five.
- 11 (5) Is the claimant able to do any other work? If not, the
12 claimant is found disabled. If so, the claimant is found
13 not disabled.

14

15 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
16 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b) -
17 (g)(1), 416.920(b)-(g)(1).

18

19 The claimant has the burden of proof at steps one through four
20 and the Commissioner has the burden of proof at step five.
21 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
22 affirmative duty to assist the claimant in developing the record
23 at every step of the inquiry. Id. at 954. If, at step four, the
24 claimant meets his or her burden of establishing an inability to
25 perform past work, the Commissioner must show that the claimant
26 can perform some other work that exists in "significant numbers"
27 in the national economy, taking into account the claimant's
28 residual functional capacity ("RFC"), age, education, and work

experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so by the testimony of a VE or by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional (strength-related) and non-exertional limitations, the Grids are inapplicable and the ALJ must take the testimony of a vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

12

13

v.

14

THE ALJ'S DECISION

15

16 The ALJ employed the five-step sequential evaluation process
17 and concluded that Plaintiff was not disabled within the meaning
18 of the Social Security Act.⁵ (AR 34). At step one, the ALJ found
19 that Plaintiff has not engaged in substantial gainful activity
20 since June 21, 2013, the application date. (AR 22). At step two,
21 the ALJ found that Plaintiff's cirrhosis of the liver; history of
22 chronic hepatitis C virus infection; osteoarthritis in the cervical
23 spine, lumbar spine, right hip, and both knees; obesity; mood

24

⁵ Plaintiff was found not disabled in a final decision by an ALJ dated February 15, 2012, based on a prior application for SSI benefits. (AR 107-15). The ALJ did not give res judicata effect to the prior finding because he found that Plaintiff submitted new and material evidence that demonstrated new or more severe impairments than existed during the prior adjudication period. (AR 20).

25

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1 disorder secondary to substance abuse; methamphetamine abuse; and
2 alcohol abuse are severe impairments.⁶ (AR 23). At step three,
3 the ALJ determined that Plaintiff does not have an impairment or
4 combination of impairments that meet or medically equal the
5 severity of any of the listings enumerated in the regulations. (AR
6 23-25).

7

8 The ALJ then assessed Plaintiff's RFC and concluded that she
9 can perform a range of light work, as defined in 20 C.F.R.
10 § 416.967(b),⁷ except:

11

12 [Plaintiff can] stand and walk for six hours out of an
13 eight-hour workday with regular breaks; walk on uneven
14 terrain occasionally; sit for six hours out of an eight-
15 hour workday with regular breaks; push and pull with the
16 weight limits indicated for lifting and carrying; perform
17 postural activities occasionally; must avoid
18 concentrated exposure to extreme cold and vibration;

19

20 ⁶ The ALJ found that Plaintiff's medically determinable
21 impairments of chronic obstructive pulmonary disease (COPD),
22 stomach varices, and left ankle sprain cause only a slight
abnormality that would have no more than a minimal effect on her
ability to work and are therefore nonsevere. (AR 23).

23 ⁷ "Light work involves lifting no more than 20 pounds at a time
24 with frequent lifting or carrying of objects weighing up to 10
pounds. Even though the weight lifted may be very little, a job
25 is in this category when it requires a good deal of walking or
standing, or when it involves sitting most of the time with some
pushing and pulling of arm or leg controls. To be considered
26 capable of performing a full or wide range of light work, you must
have the ability to do substantially all of these activities." 20
27 C.F.R. § 416.967(b).

28

1 understand, remember, and carry out simple instructions
2 to perform tasks that are simple and routine and require
3 only simple work-related decisions; and no other
4 exertional or nonexertional limitations.

5

6 (AR 25). At step four, the ALJ found that Plaintiff is unable to
7 perform any past relevant work. (AR 32). Based on Plaintiff's
8 RFC, age, education, work experience, and the VE's testimony, the
9 ALJ determined at step five that there are jobs that exist in
10 significant numbers in the national economy that Plaintiff can
11 perform, including cafeteria attendant, toy assembler, and
12 housekeeping cleaner. (AR 32-33). Accordingly, the ALJ found that
13 Plaintiff was not under a disability as defined by the Social
14 Security Act since June 21, 2013, the application date. (AR 33).

15

16 **VI.**

17 **STANDARD OF REVIEW**

18

19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The court may set aside
21 the Commissioner's decision when the ALJ's findings are based on
22 legal error or are not supported by substantial evidence in the
23 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.
24 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,
25 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035
26 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.
27 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,
28 885 F.2d 597, 601 (9th Cir. 1989)).

1 "Substantial evidence is more than a scintilla, but less than
2 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
3 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
4 evidence which a reasonable person might accept as adequate to
5 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;
6 Smolen, 80 F.3d at 1279). To determine whether substantial
7 evidence supports a finding, the court must "'consider the record
8 as a whole, weighing both evidence that supports and evidence that
9 detracts from the [Commissioner's] conclusion.' " Auckland, 257
10 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
11 1993)). If the evidence can reasonably support either affirming
12 or reversing that conclusion, the court may not substitute its
13 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
14 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

15

16 **VII.**

17 **DISCUSSION**

18

19 In her sole claim, Plaintiff contends that the ALJ erred by
20 failing to properly consider her treating physician's opinion.
21 (Dkt. No. 20 at 2-4). She argues that "the ALJ failed to provide
22 any specific and legitimate reasons for rejecting treating
23 physician Dr. Kayali's medical opinion." (Id. at 3).

24

25 The medical opinion of a claimant's treating physician is
26 given "controlling weight" so long as it "is well-supported by
27 medically acceptable clinical and laboratory diagnostic techniques
28 and is not inconsistent with the other substantial evidence in [the

1 claimant's] case record." 20 C.F.R. §§ 404.1527(c)(2),
2 416.927(c)(2). "When a treating doctor's opinion is not
3 controlling, it is weighted according to factors such as the length
4 of the treatment relationship and the frequency of examination,
5 the nature and extent of the treatment relationship,
6 supportability, and consistency with the record." Revels v.
7 Berryhill, 874 F.3d 648, 654 (9th Cir. 2017); see also 20 C.F.R.
8 §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6). Greater weight is also
9 given to the "opinion of a specialist about medical issues related
10 to his or her area of specialty." 20 C.F.R. §§ 404.1527(c)(5),
11 416.927(c)(5).

12

13 "To reject an uncontradicted opinion of a treating or
14 examining doctor, an ALJ must state clear and convincing reasons
15 that are supported by substantial evidence." Bayliss v. Barnhart,
16 427 F.3d 1211, 1216 (9th Cir. 2005). "If a treating or examining
17 doctor's opinion is contradicted by another doctor's opinion, an
18 ALJ may only reject it by providing specific and legitimate reasons
19 that are supported by substantial evidence." Id.; see also
20 Reddick, 157 F.3d at 725 (The "reasons for rejecting a treating
21 doctor's credible opinion on disability are comparable to those
22 required for rejecting a treating doctor's medical opinion.").
23 "The ALJ can meet this burden by setting out a detailed and thorough
24 summary of the facts and conflicting clinical evidence, stating
25 his interpretation thereof, and making findings." Trevizo v.
26 Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (citation omitted).
27 "When an examining physician relies on the same clinical findings
28 as a treating physician, but differs only in his or her conclusions,

1 the conclusions of the examining physician are not 'substantial
2 evidence.' " Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).
3 Additionally, "[t]he opinion of a nonexamining physician cannot by
4 itself constitute substantial evidence that justifies the rejection
5 of the opinion of either an examining physician or a treating
6 physician." Lester v. Chater, 81 F.3d 821, 831 (9th Cir. 1995)
7 (emphasis in original). Finally, when weighing conflicting medical
8 opinions, an ALJ may reject an opinion that is conclusory, brief,
9 and unsupported by clinical findings. Bayliss, 427 F.3d at 1216;
10 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

11

12 On May 22, 2014, Dr. Kayali, Plaintiff's treating physician,
13 completed a physical RFC form at Plaintiff's request. (AR 716-
14 18). Dr. Kayali opined that Plaintiff could lift and carry less
15 than ten pounds; stand and walk less than two hours in an eight-
16 hour workday; sit about six hours in an eight-hour workday; never
17 climb stairs or ladders; avoid all exposure to extreme cold,
18 extreme heat, respiratory irritants, and hazards; and never drive
19 automobiles or operate machinery. (AR 716-18). Dr. Kayali also
20 opined that Plaintiff would likely miss more than three days of
21 work per month. (AR 718).

22

23 The ALJ gave "little weight" to Dr. Kayali's opinion because
24 it was "inadequately explained and inadequately supported." (AR
25 30-31). Because Dr. Kayali's opinion was contradicted by the State
26 agency consultant, the Court reviews the ALJ's rejection of Dr.
27 Kayali's opinion for "specific and legitimate reasons that are
28 supported by substantial evidence in the record." Moore v. Comm'r

1 of Soc. Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002) ("The ALJ
2 could reject the opinions of Moore's examining physicians,
3 contradicted by a nonexamining physician, only for specific and
4 legitimate reasons that are supported by substantial evidence in
5 the record.") (citation omitted). The Court finds that the ALJ
6 provided specific and legitimate reasons, supported by substantial
7 evidence, for rejecting Dr. Kayali's opinion.⁸

8
9 Dr. Kayali failed to adequately explain or support his
10 opinion. Medical opinions that are inadequately explained or lack
11 supporting clinical or laboratory findings are entitled to less
12 weight. Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ
13 properly rejected "check-off reports that did not contain any
14 explanation of the bases of their conclusions"); Johnson v.
15 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ properly rejected
16 physician's opinion where it was "conclusory and unsubstantiated
17 by relevant medical documentation"); see also 20 C.F.R.
18 § 416.927(c)(3) ("The more a medical source presents relevant
19 evidence to support a medical opinion, particularly medical signs
20

21 ⁸ While the ALJ did not expressly find that Dr. Kayali's opinion
22 was contradicted by the State agency physician's opinion, the Court
23 can infer from the record that Dr. Kayali's opinion was
24 inconsistent with the State agency physician's, who found that
25 Plaintiff was capable of a limited range of light work. (Compare
26 AR 716, with id. 129-30); see Trevizo, 871 F.3d at 676 ("The ALJ
27 did not expressly find that Dr. Galhotra's opinion was contradicted
28 by any of the other physicians, but we can infer from the record
 that on at least two points Dr. Galhotra's opinion was inconsistent
 with Dr. Quinones' – standing or walking and sitting within an
 eight-hour workday."). Even if Dr. Kayali's opinion was
 uncontradicted, the ALJ has given "clear and convincing" reasons
 that are supported by substantial evidence, as discussed below.

1 and laboratory findings, the more weight we will give that medical
2 opinion. The better an explanation a source provides for a medical
3 opinion, the more weight we will give that medical opinion."). As
4 the ALJ noted, Dr. Kayali's explanation was "limited to listing
5 the diagnoses of 'cirrhosis, chronic fatigue, hepatitis C, [and]
6 mental disorder' and indicating that cirrhosis and portal
7 hypertension 'prevents patient from lifting or pushing.' " (AR
8 30; see id. 717). The medical evidence does confirm that
9 Plaintiff's cirrhosis, history of hepatitis C, and mood disorder
10 are severe impairments. (AR 23). However, the mere existence of
11 these conditions does not provide any support for the disabling
12 limitations opined to by Dr. Kayali. Indeed, "[t]he mere existence
13 of an impairment is insufficient proof of a disability." Matthews
14 v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993); see Key v. Heckler,
15 754 F.2d 1545, 1549 (9th Cir. 1985) ("The mere diagnosis of an
16 impairment . . . is not sufficient to sustain a finding of
17 disability.").

18

19 Dr. Kayali reported that imaging, laboratory findings, and
20 biopsies support his opinion that Plaintiff's cirrhosis precludes
21 her from lifting or pushing. (AR 717). However, as the ALJ noted,
22 Dr. Kayali did not describe these findings in any detail. (AR 31).
23 Indeed, while there is some evidence that Dr. Kayali periodically
24 treated Plaintiff beginning in March 2014 (AR 324), no treatment
25 records for Dr. Kayali were submitted by Plaintiff, despite the
26 ALJ holding the record open for two weeks following the
27 administrative hearing (AR 43). Thus, it is not clear which
28 findings, if any, Dr. Kayali reviewed in reaching his opinion. An

1 ALJ may reject a physician's opinion that is conclusory, brief,
2 and unsupported by clinical findings. Bayliss, 427 F.3d at 1216;
3 Tonapetyan, 242 F.3d at 1149.

4

5 With respect to Plaintiff's portal hypertension, the ALJ found
6 that "the objective medical evidence does not indicate that [it]
7 was present on a continuing and persistent basis" such as would
8 "impose the limitations assessed" by Dr. Kayali. (AR 31). The
9 ALJ emphasized that the typical symptoms of portal hypertension,
10 such as ascites or varices, were minimal or nonexistent during the
11 relevant period.⁹ (AR 31) (citing id. 1013 (August 2013 abdominal
12 ultrasound found only a "small amount of ascites"), 892 (August
13 2014 CT scan found "[d]ilated veins of the abdominal wall"), 1026
14 (April 2015 abdominal ultrasound revealed no evidence of ascites
15 or varices), 771 (April 2015 CT scan found only "minimal
16 varices . . . near the cardia of the stomach"). "[A]n ALJ may
17 discredit treating physicians' opinions that are conclusory, brief,
18 and unsupported by the record as a whole or by objective medical
19 findings." Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190,
20 1195 (9th Cir. 2004) (citation omitted).

21

22 Plaintiff contends that "extensive medical evidence fully
23 supports [Dr. Kayali's] opinion." (Dkt. No. 20 at 4). To the
24 contrary, as the ALJ's thorough discussion of the medical record
25

26 ⁹ See <<https://www.webmd.com/digestive-disorders/digestive-diseases-portal#1>> (describing varices (swollen veins) and ascites
27 as two common symptoms of portal hypertension) (last visited May
28 3, 2018).

1 indicates, evidence regarding Plaintiff's orthopedic complaints
2 was largely unremarkable. In August 2011, an orthopedic evaluation
3 was normal except for tenderness to palpitation in the knees and
4 positive McMurray's testing. (AR 27; see id. 380). An x-ray of
5 Plaintiff's knees indicated only "minimal" arthritic changes. (AR
6 27; see id. 379). An x-ray of Plaintiff's cervical spine in
7 December 2012 found only "minimal" disc narrowing with "minimal"
8 osteophyte formation. (AR 27; see id. 1010). In an October 2013
9 consultative evaluation, a physical examination was largely
10 unremarkable, with normal range of motion in the cervical and
11 lumbar spine. (AR 28; see id. 659-61). In January 2015, a CT scan
12 of Plaintiff's lumbar spine revealed only "mild" disc degeneration,
13 and a CT scan of her right hip demonstrated only "mild"
14 osteoarthritis. (AR 28; see id. 896, 901). In March 2015, an
15 orthopedic specialist evaluated Plaintiff and found that Plaintiff
16 walked independently, had tenderness over the right hip and painful
17 range of motion upon rotation, but had full range of motion in her
18 knees and ankles, and displayed no signs of neurological defects.
19 (AR 28; see id. 904). The physician diagnosed "mild"
20 osteoarthritis of the right hip and ordered a cortisone injection,
21 after which there was little treatment. (AR 28; see id. 904-05,
22 907, 1025). Plaintiff has not identified any medical records to
23 the contrary. (See generally Dkt. No. 20 at 4). Further, the ALJ
24 found that while Plaintiff was diagnosed with cirrhosis in April
25 2013, imaging tests inconsistently indicated the presence of
26 ascites and varices, as discussed above. (AR 27-28, 31; see id.
27 771, 892, 1013, 1026). Thus, the ALJ properly gave more weight to
28 the State agency consultant's opinion, which the ALJ found was more

1 consistent with the medical record. (AR 30). "State agency medical
2 and psychological consultants are highly qualified physicians and
3 psychologists who are experts in the evaluation of the medical
4 issues in disability claims under the Act." SSR 96-6p, at *2. "In
5 appropriate circumstances, opinions from State agency medical and
6 psychological consultants and other program physicians and
7 psychologists may be entitled to greater weight than the opinions
8 of treating or examining sources." Id. at *3; see 20 C.F.R.
9 §§ 404.1527(c)(3)-(4), 416.927(c)(3)-(4).

10

11 In sum, the ALJ provided specific and legitimate reasons,
12 supported by substantial evidence in the record, for giving Dr.
13 Kayali's opinion little weight. Accordingly, because substantial
14 evidence supports the ALJ's assessment of Dr. Kayali's opinion,
15 this Court must affirm the ALJ's decision.

16

17 **VIII.**

18

CONCLUSION

19

20 Consistent with the foregoing, IT IS ORDERED that Judgment be
21 entered AFFIRMING the decision of the Commissioner. The Clerk of
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1 the Court shall serve copies of this Order and the Judgment on
2 counsel for both parties.

3

4 DATED: May 3, 2018

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6 /S/
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8 SUZANNE H. SEGAL
9 UNITED STATES MAGISTRATE JUDGE

10 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS OR ANY OTHER LEGAL DATABASE.**

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